

REMARKS

Claims **1, 6-13, 15, 26, 31-38, 40, 51, 62-63, 65-67, 69-77, 79-81, and 83-88** are pending in this application. According to the August 5, 2008 Office Action, claims **1, 6-13, 15, 26, 31-38, 40, 51, 62-63, 65-67, 69-77, 79-81, and 83-88** are rejected.

We have amended independent claims **1, 26, 51, and 88**, have amended dependent claims **6-11, 15, 31-33, 35, 40, 63, 65, 67, 70, 72-74, 77, 79, 81, and 85-86**, and have added new dependent claims **89-100** to recite particular embodiments that we, in our business judgment, have currently determined to be commercially desirable. We have canceled dependent claims **66, 69, 80, 83, and 87**. We will pursue the subject matter of the previously presented and canceled claims in one or more continuing applications.

Accordingly, the following claims are under consideration:

- Independent claims **1, 26, 51, and 88**.
- Dependent claims **6-13, 15, 31-38, 40, 62-63, 65, 67, 70-77, 79, 81, 84-86, and 89-100**.

I. RESPONSE TO THE REJECTION OF THE CLAIMS UNDER 35 U.S.C § 103(a) AS BEING UNPATENTABLE OVER LI IN VIEW OF KEITH

At paragraph 1, pages 3-9 of the Office Action, the Examiner rejects previously presented claims **1, 9, 11, 13, 26, 34, 36, 38, 51, 62, 65, 69-73, 76, 79, 83-84, 86, and 88** under 35 U.S.C. § 103(a) as being unpatentable over Li et al., U.S. Patent Application Publication No. 2002/0194107 (hereinafter Li) in view of Keith, U.S. Patent Application Publication No. 2004/0236614 (hereinafter Keith). The Examiner fails to establish a *prima facie* case of obviousness of any of the claims.

Specifically, amended independent claim **1** (and similarly, amended independent claims **26, 51, and 88**) recites in part:

collecting ... sizes and prices at which the VWAP orders are matched;

collecting ... a plurality of trade prices and trade sizes of the item...;

determining ... the VWAP price based at least in part on:

(i) the collected trade prices and trade sizes, and

(ii) the collected sizes and prices at which the VWAP orders are matched;

In rejecting similar limitations of previously presented claim **1** (and similarly, previously presented claims **26**, **51**, and **88**), the Examiner asserts that Li discloses such limitations as follows:

- collecting sizes and prices associated with the matched VWAP orders (at least paragraph 36: requests with sizes collected, price determined, matched results collected and provided)
- collecting a plurality of trade prices and trade sizes (at least paragraph 37: sizes and prices of all trades has been collected)
- determining the VWAP price based on trade prices and trade sizes, and based at least on a portion of the plurality of matched orders; (at least paragraph [0037]: VWAP calculated)
- determining a VWAP price based at least in part on the collected sizes and prices associated with the matched VWAP orders (at least paragraph [0037]: VWAP price determined based on details of matched requests)

Office Action, pages 3-4.

In other words, the Examiner asserts that:

- (i) At paragraph 36, Li discloses “*collecting ... sizes and prices at which the VWAP orders are matched,*”
- (ii) At paragraph 37, Li discloses “*collecting ... a plurality of trade prices and trade sizes of the item,*” and
- (iii) At paragraph 37, Li discloses “*determining ... the VWAP price based at least in part on: (i) the collected trade prices and trade sizes, and (ii) the collected sizes and prices at which the VWAP orders are matched.*”

Li paragraph 37 states:

[0037] Once system **10** has received all requests **42** and offers **44** and has performed all matching, software **28** executing on computer **20** automatically calculates, at the expiration of the specified time period, a volume weighted average price of all shares of the financial asset traded during the time period according to the following formula:

$$\text{VWAP} = \frac{(\# \text{ of shares traded})(\text{trading price of each share})}{\text{total \# of shares traded}}$$

Contrary to the Examiner's assertion, no where in Li paragraph 37 does Li disclose determining a VWAP price based on two different sets of prices and sizes, or in other words, both "*the collected sizes and prices at which the VWAP orders are matched*" (which the Examiner asserts are collected at Li paragraph 36) and "*the collected trade prices and trade sizes*" (which the Examiner asserts are collected at Li paragraph 37). In other words, Li paragraph 37 states that the "software ... calculates a volume weighted average price of all shares of the financial asset traded during the time period." However, the Examiner fails to articulate (nor does Li disclose) how "all shares of the financial asset traded during the time period" includes both "*the collected sizes and prices at which the VWAP orders are matched*" (which the Examiner asserts are collected at Li paragraph 36) and "*the collected trade prices and trade sizes*" (which the Examiner asserts are collected at Li paragraph 37).

Accordingly, because the cited portions of Li have not been shown to disclose all the above noted limitations of claim **1**, the Examiner fails to establish a *prima facie* case of obviousness of claim **1** (and similarly, independent claims **26**, **51**, and **88**).

Because claims **9**, **11**, **13**, **34**, **36**, **38**, **62**, **65**, **70-73**, **76**, **79**, **84**, and **86** depend from independent claims **1**, **26**, and **51**, the cited portions of Li and Keith have not been shown to disclose all the limitations of these claims for at least the same reasons as claims **1**, **26**, and **51**.

In addition, regarding the Examiner's assertions at page 7 of the Office Action with respect to claims **11** and **36**, we again reiterate our remarks as presented at pages 26 and 27 of the January 23, 2008 Amendment/Submission.

II. RESPONSE TO THE REJECTION OF THE CLAIMS UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER LI IN VIEW OF KEITH, WAGNER, HUGHES, and FRIEDLAND

At paragraphs 2-4, pages 10-14 of the Office Action, the Examiner rejects previously presented claims **6-8, 15, 31-33, and 40** under 35 U.S.C. § 103(a) as being unpatentable over Li in view of Keith, and in further view of Wagner, U.S. Patent 4,980,826 (hereinafter Wagner), rejects previously presented claims **10, 12, 35, and 37** under 35 U.S.C. § 103(a) as being unpatentable over Li in view of Keith, and in further view of Hughes et al., U.S. Patent Application Publication No. 2003/0225673 (hereinafter Hughes), and rejects previously presented claims **63, 66-67, 74-75, 77, 80, 81, 85, and 87** under 35 U.S.C. § 103(a) as being unpatentable over Li in view of Keith, and in further view of Friedland et al., U.S. Patent Application Publication No. 2002/0174060 (hereinafter Friedland).

Because claims **6-8, 10, 12, 15, 31-33, 35, 37, 40, 63, 67, 74-75, 77, 81, and 85** depend from independent claims **1, 26, and 51**, the cited portions of the references have not been shown to disclose all the limitations of these claims for at least the same reasons set forth above for claims **1, 26, and 51**.

In addition, regarding the Examiner's assertions at page 11 of the Office Action with respect to Wagner, we again reiterate our remarks as presented at page 28 of the January 23, 2008 Amendment/Submission.

III. NEW CLAIMS

Because new dependent claims **89-100** depend from independent claims **1, 26, 51 and 88**, the cited portions of the references have not been shown to disclose all the limitations of these claims for at least the same reasons set forth above for claims **1, 26, 51 and 88**.

IV. CONCLUSION

In view of the amendments and remarks, we respectfully submit that the claims are in condition for allowance. We request that the application be passed to issue in due course. The Examiner is urged to telephone the undersigned representative at the number noted below if it will

advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance.

Respectfully submitted,

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Date

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